

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

In Re:	:	Case Number: 21-60559
	:	
	:	
Natalie K. Hillman,	:	Chapter 13
	:	
Debtor(s).	:	Judge Russ Kendig

**MOTION FOR TURNOVER OF FUNDS FROM CAPITAL ONE AUTO FINANCE, A  
DIVISION OF CAPITAL ONE N.A.**

Now comes the Debtor, Natalie K. Hillman by and through her attorney, David A. Mucklow and states the following in support of the Motion for Turnover of Funds from Capital One Auto Finance, A Division of Capital One, N.A (“Capital One”).

1. The Debtor filed Chapter 13 on April 21, 2021. The Debtor’s plan was confirmed on July 29, 2021. The confirmed plan at paragraph 3.3 provided that the Debtor make payments directly to Capital One Auto Finance. It also provided: “Debtor agrees to turn over any net proceeds received during the Plan from the sale of the property located at 1100 Pondella Drive #703, Cape Coral, FL 33909.” Additionally, an Agreed Order was entered on August 24, 2021 in response to a Motion to Modify the Stay, which also provided: “Debtor agrees that only her one-third share of the net proceeds from the sale of the subject property are property of her bankruptcy estate, and will be paid into the Chapter 13 plan. Debtor agrees that the remaining balance of the net proceeds from the sale of the subject property belong to Joyce Divito and Raymond Divito.”

2. Capital One filed a Motion for Relief from Stay (“Motion”) on December 28, 2021, due to alleged delinquent post-petition payments for the Debtor’s auto loan a 2020 Ford EcoSport. The Debtor had cured the delinquent payments to Capital One and it was discovered

that payments had been delayed in the transmission due to an agent used to process the payments for Capital One. In order to resolve the Motion, the Trustee required that the auto loan be paid through the plan as a conduit payment. The Agreed Order stated: “The parties agree . . . the Debtor will pay the auto loan to Creditor . . . through the Chapter 13 Plan of this case, via conduit in the amount of \$573.94 per month. . . . Creditor’s Motion for Relief from Stay (Doc. 64) is hereby withdrawn.

3. The Debtor filed a plan modification adding the auto loan to the plan on March 4, 2022 and the Trustee objected. The plan modification never became effective due to the objection and Trustee removed the matter from the Court’s recent hearing docket. The Debtor is withdrawing the plan modification filed on March 4, 2022 (Docket No. 71) due to the Trustee’s actions.

4. On or about April 26, 2022, the Trustee received net proceeds from the sale of the property located at 1100 Pondella Rd #703 Cape Coral, FL 33909 in the amount of \$34,364.54 in representing the Debtor’s one-third interest in the property.

5. Three days later on April 29, 2022, the Debtor filed a modification to pay the unsecured creditors 100% and deem the Chapter 13 paid in full and requesting discharge. This modification is also being withdrawn until further disposition by the Court.

6. Allegedly that same date of April 29, 2022, the Trustee distributed \$24,105.92 to Capital One (Claim No. 3) over paying the secured claim in excess of \$500. The Agreed Order on the Motion for Relief from Stay of Capital One Auto Finance, A Division of Capital One states Capital One was to be paid “through the Chapter 13 plan of this case, via conduit in the amount of \$573.94 per month”. The Trustee should not have paid the claim in full. No explanation has been provided. No provision of the plan or Agreed Order supports paying the

vehicle off in full plus \$500.

WHEREFORE, the Debtor requests that the distribution of \$24,105.92 be refunded from Capital One back to the Trustee for further disposition by the Court.

Respectfully Submitted by:

/s/ David A. Mucklow  
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## **NOTICE**

**Natalie K. Hillman**, the Debtor has filed a Motion for Turnover of Funds from Capital One Auto Finance, A Division of Capital One N.A. in this bankruptcy case.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this Bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant said motion, or if you want the court to consider your views on the motion, then on or before **June 6, 2022**, you or your attorney must:

File with the court a written request for hearing {or, *if the court requires a written response*, an answer, explaining your position}  
at:

Ralph Regula Federal Building  
U.S. Courthouse  
401 McKinley Ave. SW  
Canton, OH 44702

You must also mail a copy to:

David A. Mucklow, Esq.  
Attorney for the Debtor  
919 E. Turkeyfoot Lake Road  
Suite B  
Akron, OH 44312

Attend the hearing to be held at Ralph Regula Federal Building, U.S. Courthouse 401 McKinley Ave. S.W., Canton, OH 44702 on **June 15, 2022** at **2:00 p.m.**

If you or your attorney do not take these steps, the court may decide that you do not oppose this Motion.

**CERTIFICATE OF SERVICE**

I certify that on or about 20<sup>th</sup> day of May, 2022 that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list:

Todd A. Fichtenberg todd@alharrisonlaw.com

Dynele L Schinker-Kuharich DLSK@Chapter13Canton.com,  
dschinkerkuharich@ecf.epiqsystems.com

United States Trustee (Registered address)@usdoj.gov

I certify on or about 20<sup>th</sup> day of May, 2022 that a true and correct copy of the foregoing was sent via U.S. regular postage prepaid or certified mail to the persons listed below.

Natalie K Hillman  
1241 Willoway Avenue SE  
North Canton, OH 44720

Capital One Auto Finance, division of Capital One, N.A.  
AIS Portfolio Services, LP  
4515 N. Santa Fe Ave., Dept APS  
Oklahoma City, OK 73118

/s/ David A. Mucklow  
DAVID A. MUCKLOW, (#0072875)